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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,794

02/09/2004

John G. Berger

17,441

9011

7590

09/22/2005

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EXAMINER

NGUYEN, THU V

ART UNIT

PAPER NUMBER

3661

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,794

Applicant(s)

BERGER ET AL.

Examiner

Thu Nguyen

Art Unit

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, line 1, the claimed "the ground speed sensor" lacks of antecedent basis.

In claim 8, line 1, the claimed "the engine speed sensor" lacks of antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polzin et al (US 6,305,486) in view of Ferguson et al (US 5,576,962).

As per claim 1-2, Polzin teaches an electronic speed control system for a vehicle, the system comprises: a left and right wheel connected to and powered by a variable speed reversible hydraulic motor (col.2, lines 48-52); a variable output and reversible hydraulic pump connected

to the motor and driven by an engine to drive the motor speed in forward, reverse direction by varying the pump output (col.2, lines 31-35, lines 48-63). Polzin does not explicitly disclose a pump control device for selecting between forward, reverse and neutral pump setting and to vary the output of the pump in forward and reverse settings, a speed control device for varying the settings and outputs of both pumps, a speed control power apparatus for varying the output of both pumps and a microprocessor for providing a signal to determine the motion imparted to the speed control device based on a program, the readings of sensors, and providing signals indicating the status of parameters of the machine, and a speed control sensor for sending a signal indication the speed setting of the manual speed control. However, since Polzin teaches the capability to control the pump output for controlling the vehicle in forward, reverse or neutral settings (col.2, lines 56-63; col.3, lines 1-28), Polzin obviously encompasses teaching a pump control device. Furthermore, Polzin teaches the operator manual speed control (col.2, lines 64-67), and Ferguson teaches a speed control power apparatus for varying the output of the pump (col. 2, lines 62-67; col.3, lines 1-13), and a microprocessor for determining the motion of the speed control device based upon a program and the reading of sensors (col.2, lines 25-32, lines 40-44), moreover, providing one speed control power apparatus to control a plurality of pump would have been known and obvious matter of design choice. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the speed control and the microprocessor taught by Ferguson to the apparatus of Polzin in order to facilitate controlling the pump output using computer control and calculation.

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As per claim 3, Polzin teaches including a hydraulic cylinder connected to and operated by a control valve (col.2, lines 31-38), connecting the valve to and receiving signals from the microprocessor taught by Ferguson would have been both well known and obvious to an ordinary person skilled in the art at the time the invention was made.

As per claim 4-8, connecting control arms from the pump to the speed control rod to facilitate controlling the pump output according to the user's require, using dual effect sensor for detecting the speed control position, the reluctant sensor for detecting the ground speed and the magnetic sensor for detecting engine speed would have been well known.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Nguyen whose telephone number is (571) 272-6967. The examiner can normally be reached on T-F (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 19, 2005



THUY V. NGUYEN
PRIMARY EXAMINER